

This letter responds to an annual survey. See 86 Ill. Adm. Code, Parts 130, 140, 150 and 160. (This is a GIL.)

August 2, 2007

Dear Xxxxx:

This letter is in response to your survey dated May 23, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter, you have stated and made inquiry as follows:

The ABC, in conjunction with XYZ, annually undertakes a major information collection effort with respect to the application of the tax laws of the states. ABC's goal in gathering this information is to assemble and publish the GUIDE. As the market has shown, such a publication is a useful reference source for departments of revenue, attorneys, corporate tax departments, and public accounting firms.

ABC is in the process of updating the Guide for its 2008 annual edition. Accordingly, we ask for your state's assistance in preparing this important publication. I have attached a Microsoft Word file with this year's questionnaire. (If you do not have a copy of your 2006 response, and it would be helpful to you in completing the 2007 questionnaire, please let me know and I will email you a copy.)

This year, the numbering scheme and the sequence of the questions remains essentially the same. Also, please note that the new questions are highlighted in boldface and larger print. Therefore, you should be able to easily follow the changes from last year to this year. Because of anticipated time constraints for respondents, this year we are asking that you only respond to the questions that have changed and the new questions. All unanswered questions will be considered the same as last year's answer unless otherwise noted.

Please complete the 2007 questionnaire and return it by July 16, 2007, via email. The enclosed questionnaire should be answered in accordance with laws in effect as of July 1, 2007. If there is legislation pending or recently enacted that would alter your answers, please explain any such changes that you are aware of at the time the questionnaire is completed.

Beginning in the fall 2000, ABC began a tuition assistance program for state department of revenue employees in appreciation for their assistance in publishing the GUIDE. A limited amount of tuition assistance is available for courses in ABC's Online Graduate Certificate in State and Local Taxation. This Certificate program is the first of its kind in the nation to be offered totally online. To receive the Certificate, students must complete the four-course curriculum. For further information about the program or available tuition assistance contact INDIVIDUAL.

If you have any questions about the questionnaire or individual questions, please contact me. Thank you for your continued cooperation and support. Your contributions are extremely valuable in maintaining the quality of this outstanding reference work. A complimentary copy of the 2008 GUIDE will be sent to you when it is published next year.

If you could confirm that you received this email and that you will be handling the response for your state this year as noted in this email, it would be very helpful to me. If someone else will be responding this year, please let me know who to contact. Thanks again for all your help on this project.

In your questionnaire, you have stated and made inquiry, in part, as follows:

III. SALES AND USE TAXES

A. **COMPLIANCE AND ADMINISTRATION**

4.

Online Filing of Sales and Use Tax Returns

Does your state provide for online filing of sales and use tax returns?

Yes _____ No _____

If yes, is pre-approval required? Yes _____ No _____

What is the website for taxpayers to use in online filing? _____

How is the payment handled when taxpayers file online?

EFT _____

Mail payment _____

Credit Card _____

Other _____ Please specify _____

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11. Are private rulings issued? ___ Yes ___ No

· If rulings are issued, is the issuance pursuant to (check one):

___ Statute (please identify) _____

- ____ Regulation (please identify) _____
- Can a ruling be retroactive? ____Yes ____No
 - Does the ruling have value as precedent? ____Yes ____No
 - Which office is responsible for issuing rulings? _____
 - Are rulings published? ____Yes ____No If 'Yes,' where published _____
 - If rulings are not published, are they available for public inspection? ____Yes ____No
 - Can a ruling applicant contest the disclosure of the ruling? ____Yes ____No
 - Are rulings expanded into tax policy statements? ____Yes ____No
 - Is a filing or other fee charged for the ruling? ____Yes ____No If 'Yes,' charge: \$ _____
 - Are requests for rulings ever declined? ____Yes ____No
 - Check all of the following statements that apply to sales and use tax rulings.
 - ____ The state acknowledges receipt of the ruling request.
 - ____ A ruling is issued only regarding prospective transactions.
 - ____ The taxpayer can obtain a ruling for alternative plans for the transaction.
 - ____ Prior to issuance, the taxpayer can obtain a face-to-face meeting with the state to discuss the ruling.
 - ____ The taxpayer can request a ruling with respect to an issue that is under audit.
 - ____ The taxpayer can withdraw a ruling request before issuance.
 - ____ Responses to this survey constitute a ruling.

23. Streamlined Sales Tax Agreement (SST)

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Is there currently any legislation under consideration in your state that incorporates language recommended by the **SST**?

Yes _____
No _____

If yes, what provision(s) has/have been enacted? Please specify

B. Sales and Use Tax Base

5. **Exemptions.** Are the following *exempt* from sales tax? If not, what tax rate applies to them?

- Production machinery ____Yes ____No (tax rate: _____)
- Pollution control equipment ____Yes ____No (tax rate: _____)
- Agricultural equipment ____Yes ____No (tax rate: _____)
- Direct materials, consumed ____Yes ____No (tax rate: _____)
in producing the final product
- Direct materials, *not* consumed ____Yes ____No (tax rate: _____)
in producing the final product
- Packaging ____Yes ____No (tax rate: _____)

• Under the 'production machinery' sales and use exemption, must qualifying machinery be:

____ Used directly in the manufacturing process

___ Used exclusively in manufacturing
___ Other requirements (please explain) _____

· If your state exempts 'production machinery,' what level of manufacturing use qualifies for the exemption in your state?

___ Used in manufacturing more than 50%
___ Used in manufacturing more than 90%
___ 100% use in manufacturing
___ Other standard of use applies (please explain)

· Concerning 'casual/isolated' sales, identify all that apply

___ Casual/isolated sales can occur no more than _____ times per year
___ Casual/isolated sales are limited to \$_____ per year
___ The purchaser must pay use tax on a casual/isolated sale, even though the seller need not collect a sales tax thereon
___ Inventory can qualify for casual/isolated sales

· Can any of the following qualify for the casual/isolated sale exemption (check all that can qualify)?

___ Vehicles ___ Aircraft ___ Vessels ___ Mobile homes ___ Commercial coaches

38. Temporary Storage Exemption

Does your state provide a temporary storage exemption for materials purchased outside your state and temporarily stored in your state prior to transport/use outside your state?

Yes _____ **No** _____

If yes, are there specific items that qualify for exemption?

Yes _____ **No** _____

If yes, which of the following items qualify?

Printed advertising materials _____
Marketing and promotional items _____
Computer or other office equipment _____
that must be set-up or staged prior to use _____
Tangible personal property that a _____
contractor may install in real estate _____

Other _____ **(please** _____ **list** _____ **below)**

39. Penalty Abatement

Does your state have specific guidelines to be followed for the abatement of penalty?

Yes _____ **No** _____

If yes, which of the following factors would qualify as a valid reason for abatement of penalty?

First-time error or mistake _____
 Reliance upon expert operating under mistake
 of law _____
 Degree of ambiguity of issue _____
 Staffing of tax function by taxpayer _____
 Good-faith belief _____
 Reliance upon information provided by state _____
 Reliance upon past audit treatment _____
 Other (please list) _____

40. Taxation of Landscaping Services

Does your state impose tax upon landscaping services?

Yes _____ No _____

If yes, which of the following services are considered landscaping that is subject to tax? (Check all that apply)

_____ Rough grading
 _____ Final grading
 _____ Laying/installation of topsoil
 _____ Seeding
 _____ Sodding
 _____ Grass plugging of new lawns
 _____ Planting trees, shrubs, hedges, plants, etc.; and clearing and
 filling land associated with these services (including
 tree/stump removal)
 _____ Trimming of bushes, trees, and shrubs
 Other _____ (please _____ list _____ below)

Installation of the following:

_____ New fence
 _____ Low-voltage lighting
 _____ Pond
 _____ Retaining wall
 _____ Underground sprinkler system
 _____ Hardscaping (deck, paver patio, walkway, driveway, etc.)
 Other _____ (please _____ list _____ below)

41. Pollution Control Exemption

If your state provides an exemption for pollution control or abatement equipment, which of the following would qualify for exemption. Tangible personal property acquired and primarily used for the purpose of meeting air or water quality standards, rules, or regulations of a state or federal agency when purchased by:

_____ Manufacturing, mining, or farming businesses but not
 including property used to treat drinking water or to treat
 air or water not required as part of a production process;
 _____ Contractors who purchase, use, or install qualifying

_____ material at the direction of a project owner.
 _____ Businesses principally devoted to treating and storing
 hazardous and toxic waste.
 _____ Other (Please list below)

The following specific items:

_____ Fixtures, plumbing fixtures, pipes, pumps, or other items
 used to treat or transport wastewater to a wastewater
 treatment plant owned by a wastewater operator;
 _____ Fixtures or tangible personal property used to treat or
 transport drinking water by a drinking water operator;
 _____ Property used to prevent soil erosion;
 _____ Property affixed to realty and used in road construction or
 the construction of residential or commercial buildings or
 other improvements to realty;
 _____ Property used to construct buildings or structures that
 merely house pollution control equipment or a pollution
 control facility, including building materials and
 construction and excavation equipment;
 _____ Property used to install pollution control equipment or facilities;
 _____ Property that will become part of a septic tank or septic system.
 _____ Other (Please list below)

42. Computer Software Licenses

Is a software license agreement that allows the use of software that is delivered in a tangible medium for a given period of time subject to sales and use tax? Yes

_____ No _____

Is a software license agreement that allows the use of software that is electronically delivered for a given period of time subject to sales and use tax?

Yes _____ No _____

43. Manufacturing Exemption

Does your state provide for an Integrated Plant Theory Exemption, i.e., any item necessary to produce the product is exempt if it is part of the overall manufacturing process, for manufacturers?

Yes _____ No _____

Does your state provide an exemption for utilities used in the manufacturing process? Yes _____ No _____

If yes, which of the following energy sources qualify for the exemption (check all that apply)?

_____ Coal
 _____ Electricity
 _____ Fuel oils
 _____ LP gas

_____ Natural gas
_____ Nuclear fuel

Thank you for your cooperation on this project! Please return this questionnaire **BY JULY 16, 2007**, to . . .

DEPARTMENT'S RESPONSE:

The response to this survey addresses items that require change in your publication and new questions asked in the survey. The survey questions addressed are listed below along with the answers.

III. SALES AND USE TAXES

A. Compliance and Administration

Regarding Question 4:

Online Filing of Sales and Use Tax Returns

Illinois **DOES** provide for online filing of sales and use tax returns. Illinois' Sales Tax Web File program allows taxpayers to file sales and use tax returns online.

There is no specific pre-approval process to be eligible for the Sales Tax Web File program. However, the taxpayer must meet certain criteria to be eligible to use the Web File program.

The Department of Revenue's website is www.tax.illinois.gov.

Taxpayers using the Sales Tax Web File method to file may pay sales and use taxes owed by electronic funds transfer (EFT) using direct debit, ACH credit, or ACH debit. Taxpayers may also pay by paper check through the mail.

Regarding Question 11:

The Department's "Sunshine Letter" rulings are published on the Department's Internet Website at www.tax.illinois.gov under the heading of "Laws/Regs/Rulings."

As a correction to the current information published in the Guide, the Administrative Rules governing letter rulings are found at Illinois Administrative Code Title 2, Part 1200. (See 2 Ill. Adm. Code, Part 1200)

Regarding Question 23:

Senate Bill 1429 of the 95th General Assembly was filed in 2007 that incorporates language recommended by Streamlined. No action on the bill has been taken.

B: Sales and Use Tax Base

Regarding Question 5:

Farm machinery and equipment used primarily for production agriculture are exempt. See 86 Ill. Adm. Code 130.305.

Regarding Question 38, Temporary Storage Exemption:

There is a temporary storage exemption in Illinois. Authority for the temporary storage exemption is found in the Use Tax Act at 35 ILCS 105/3-55, subsections (e), (f), and (j). The administrative rules governing temporary storage are found in Title 86 of the Illinois Administrative Code, Section 150.310 (See 86 Ill. Adm. Code 150.310).

Regarding Question 39, Penalty Abatement:

Only the Board of Appeals has the authority to abate penalty and interest. Title 86, Section 210.120 of the Illinois Administrative Code governs abatement of penalty and interest. (See 86 Ill. Adm. Code 210.120) That Section reads as follows:

“Section 210.120 Waiver of Penalty and Interest

- a) A petition for abatement of a penalty or interest may be filed only in cases where the Department has no other established procedure of determination of the issue.
- b) The Board may waive penalty or interest only in the following situations:
 - 1) A late filing due to Reasonable Cause; or
 - 2) Unreasonable delays caused by the Department in any process under the control of the Department; or
 - 3) A timely payment has been made to the Department by a person other than the person who is actually liable for the tax; or
 - 4) The Board has taken special jurisdiction over a case pursuant to Section 210.130; or
 - 5) Where otherwise provided for by statute.
- c) If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, the delay is due to a reasonable cause.
- d) The Board may consider taxpayer's compliance history including previous tax violations with the Department in considering taxpayer's petition for relief based on reasonable cause.”

Regarding Question 40, Taxation of Landscaping Services:

Illinois does not impose a tax on services. However, landscape contractors fall into a category in Illinois called “construction contractors” for purposes of sales and use tax. In Illinois, construction contractors are deemed end users of tangible personal property purchased for

incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors (including landscape contractors) purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department of Revenue. See 86 Ill. Adm. Code 130.1940 and 130.2075.

Regarding Question 41, Pollution Control Exemption:

Effective July 1, 2003, the Pollution Control Exemption for sales tax generally was repealed by Public Act 93-24. This repealed exemption is described at 86 Ill. Adm. Code 130.335. However, the Pollution Control Exemption related to enterprise zones (expanded pollution control exemption) was not repealed. That provision exempts from tax gross receipts from retail sales of tangible personal property to be used or consumed in the operation of pollution control facilities within an enterprise zone (See Section 1f of the Retailers' Occupation Tax Act, 35 ILCS 120/1f) so long as the use or consumption is made by a business enterprise that has complied with certain requirements related to enterprise zone certification. (See 86 Ill. Adm. Code 130.1951(i)).

For this expanded pollution control facilities exemption, if a business enterprise is certified by the Department of Commerce and Economic Opportunity, all tangible personal property used or consumed by it in the operation of pollution control facilities within an enterprise zone is exempt from tax. In order to qualify, the item must be used exclusively in the enterprise zone and the pollution control facility must be in the enterprise zone.

Regarding Question 42, Computer Software Licenses:

The Department's rules on the taxation of computer software are found at 86 Ill. Adm. Code 130.1935. Computer software means all types of software including operational, applicational, utilities, compilers, templates, shells and all other forms. Canned software is considered to be tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. The sale at retail, or transfer, of canned software intended for general or repeated use is taxable, including the transfer by a retailer of software which is subject to manufacturer licenses restricting the use or reproduction of the software. Software licenses that meet certain requirements are exempt from tax.

Unless it meets the requirements for exemption, a software license agreement that allows the use of software that is delivered in a tangible medium for a given period of time is subject to sales and use tax.

A software license agreement that allows the use of software that is electronically delivered for a given period of time is subject to sales and use tax.

Regarding Question 43, Manufacturing Exemption:

Information on Illinois' manufacturing machinery and equipment exemption is found at 86 Ill. Adm. Code 130.330. Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease.

Illinois does not provide for an Integrated Plant Theory Exemption.

Illinois does not provide for a sales, use, or utility tax exemption for utilities used in the manufacturing process. However, for a business that meets certain criteria, that is located in an Enterprise Zone, and that is certified by the Illinois Department of Commerce and Economic Opportunity as eligible, certain utility tax exemptions are available.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Samuel J. Moore
Associate Counsel

SJM:msk